

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA**

ELIZABETH SINES	:	Case No. 3:17-cv-00072
Plaintiff	:	Judge MOON
	:	Mag. Judge Hoppe
	:	
-v-	:	
JASON KESSLER et al.	:	
	:	
Defendants		

MOTION TO SEAL EXHIBITS OR FOR ALTERNATIVE RELIEF

Now come Defendant Kessler, Damigo, Parrott, Identity Evropa (“IE”) and Traditionalist Worker Party (“TWP”) and move the Court to seal the expert reports filed as exhibits at ECF 832.

When presented with a motion to seal, the law of this Circuit requires this Court to: "(1) provide public notice of the request to seal and allow interested parties a reasonable opportunity to object, (2) consider less drastic alternatives to sealing the documents, and (3) provide specific reasons and factual findings supporting its decision to seal the documents and for rejecting the alternatives." Ashcraft v. Conoco, Inc., 218 F.3d 288, 302 (4th Cir. 2000).

The filing of a motion to seal and its availability “through the Court’s electronic filing system” constitute adequate public notice. Teter v. Project Veritas Action Fund, Civil No.

1:17-cv-00256-MR at p.3 (W.D.N.C. Mar. 18, 2019). Where the parties have stipulated to a protective order, and where information has been produced under the protection of that protective order, such order is sufficient factual support to grant a motion to seal, at least where no party, third party, or the media has objected thereto. Pittston Co. v. U.S., 368 F.3d 385, 406 (4th Cir. 2004). The plaintiffs produced all subject expert reports under a designation of “highly confidential” pursuant to the confidentiality order governing this case (ECF 167.)¹

Defendants admit a potential adequate alternative might exist. The Court itself filed the subject expert reports on the docket under temporary seal.(ECF 832.) It appears the Court could simply strike ECF 832 from the docket and examine the expert reports in a non-public fashion when considering the motion to exclude experts (ECF 826.)² This procedure would preserve the confidentiality designation attached by plaintiffs, moot the defendants’ motion to seal (ECF 827) and leave persons or media wishing to view the documents in no worse position than they were before, relative to viewing the subject reports.

Wherefore, defendants respectfully move the Court, on the authority of the above cited precedent, to seal the expert reports filed at ECF 832 until further Order of this Court. In the alternative, defendants move the Court to adopt the alternative procedure that avoids the actual granting of a motion to seal described above. Failing either of the above, defendants move the Court to grant plaintiffs’ request (ECF 838) for additional time within which interested parties may move to seal the subject exhibits. A proposed Order encompassing these three alternative requests is attached hereto.

Respectfully Submitted,

¹ Defendants’ review of the expert reports has failed to identify a justification for the confidentiality designation as to the Fenton report, and found *de minimus* amounts of confidential ESI and deposition testimony in the other two reports.

² All represented parties and the Court have copies of the relevant expert reports independent of the public docket and no party has objected to this procedure.

s/ Elmer Woodard

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CERTIFICATE OF SERVICE

I certify the above was served on August 17, 2020 on all ECF participants and that parties requiring service by other means were served as follows:

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